

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JASON W. STORTS)	
Claimant)	
VS.)	
)	Docket No. 1,024,570
PRIORITY PERSONNEL OF KANSAS, INC./)	
LANDIS PRIORITY PERSONNEL)	
Respondent)	
AND)	
)	
TRAVELERS INDEMNITY CO.)	
Insurance Carrier)	

ORDER

Respondent and its insurance carrier appealed the October 26, 2005, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

ISSUES

Claimant alleges he injured his left knee on or about May 28, 2005, while working for respondent as a temporary employee at Pitt Plastics in Pittsburg, Kansas. In the October 26, 2005, Order, Judge Hursh determined claimant injured his left knee in an accident that arose out of and in the course of claimant's employment with respondent. Consequently, the Judge granted claimant's request for temporary total disability benefits and medical benefits.

Respondent and its insurance carrier contend Judge Hursh erred. They first argue claimant failed to prove he injured his knee in an accident that arose out of and in the course of his employment with respondent. Next, they argue claimant failed to prove he provided respondent with timely notice of the alleged accident. Finally, respondent and its insurance carrier argue that any temporary total disability compensation that is awarded should not commence until the application for hearing was filed in this claim. In short, respondent and its insurance carrier request the Board to reverse the October 26, 2005, Order and deny claimant's request for benefits. In the alternative, they request the Board to modify the Order and reduce claimant's award of temporary total disability benefits.

Conversely, claimant contends the Order should be affirmed. Claimant also contends the Board does not have jurisdiction in an appeal from a preliminary hearing order to review the commencement date of claimant's temporary total disability benefits.

The only issues before the Board on this appeal are:

1. Did claimant injure his left knee in an accident that arose out of and in the course of his employment with respondent?
2. If so, did claimant provide respondent with timely notice of that accident?
3. Does the Board have jurisdiction in an appeal from a preliminary hearing order to review a finding concerning the commencement date of temporary total disability benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes the preliminary hearing Order should be affirmed.

Claimant's testimony is credible that he injured his left knee while working for respondent as a temporary employee assigned to Pitt Plastics in Pittsburg, Kansas. On the date of the accident, on or about May 28, 2005, claimant was working around several machines that manufacture trash bags. Claimant described his accident as follows:

What happened was I reached over, I grabbed a box, and as I was putting it on the skid, one of the machines -- it was the -- How do you say it. As it was coming off, it folds the [trash] bag over. Well, it had broke free. And so, I was dropping the box to run, and as I dropped the box to run, my knee snapped and I went down to the ground. And there were several people that helped me back up and asked if I was all right, and I thought I would be but --¹

Co-workers initially reported the accident to a Pitt Plastics supervisor, who then went to claimant and asked if he was all right. After taking a short break, claimant resumed his job duties.

Although claimant's left knee was swollen following the incident at work, he did not seek medical treatment until May 31, 2005, as he had hoped the swelling would recede. Instead, the swelling persisted and claimant also began experiencing sharp shooting pains, which prompted him to visit an emergency room. The notes from the emergency room

¹ P.H. Trans. at 8.

indicate claimant reported that he had injured his left knee at work but the injury was not actually work-related because he had “re-injured [an] old injury.”²

The next day claimant returned to Pitt Plastics with his work restrictions. Claimant was not allowed to work but, instead, was sent to respondent’s offices. Claimant then went to respondent’s Pittsburg, Kansas, offices and spoke with the receptionist about his left knee being injured at work. The receptionist advised claimant they would contact him if they needed additional information.

There is little question that on June 1, 2005, both Pitt Plastics and respondent learned that claimant’s left knee may have been injured at work as both had conversations with the hospital.

The greater weight of the evidence establishes that claimant injured his left knee at work on May 28, 2005, and that the accidental injury arose out of and in the course of his employment with respondent. Further, claimant provided respondent with notice of the injury within 10 days of its occurrence as required by K.S.A. 44-520.

Finally, the Board does not have jurisdiction in an appeal of a preliminary hearing order to review the finding of when temporary total disability benefits should commence as it is not one of the appealable or jurisdictional issues enumerated in K.S.A. 44-534a and the Judge did not exceed his authority by ordering those benefits.

In summary, the preliminary hearing Order should be affirmed.

WHEREFORE, the Board affirms the October 26, 2005, preliminary hearing Order entered by Judge Hursh.

IT IS SO ORDERED.

Dated this ____ day of December, 2005.

BOARD MEMBER

c: Troy A. Unruh, Attorney for Claimant
Bryce B. Moore, Attorney for Respondent and its Insurance Carrier
Kenneth J. Hursh, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² *Id.*, Resp. Ex. 3.